

## **Amendment 3962 – Requires the voluntary consent of property owners before the Federal Government can take control of any privately owned lands**

Many Americans are understandably concerned about excessive federal government influence over their lives and property.

The federal government has added layer upon layer of regulations to how private property may or may not be used and in some cases simply assumed ownership and control of land.

This amendment would simply require the citizens affected by federal government land grabs provide voluntary consent before the federal government takes control of any privately owned lands.

Taxpayers should have the final say as to whether or not politicians and government bureaucrats take control of their land and property.

### **This Bill Authorizes The Federal Government To Acquire Property**

S. 2483 authorizes the Departments of Agriculture and Interior to acquire lands by purchase, donation, or exchange. This amendment would not affect such property exchanges.

The amendment would only apply in situations involving federal eminent domain, when the government takes private property without the consent of the owner.

If the federal government attempts to use eminent domain to seize control of private property, the owners of such property should have the right to voluntarily refuse or accept such land grabs.

### **Federal Government Land Ownership Is Steadily Increasing**

The federal government owns 653.3 million acres of land, which amounts to 28.8 percent of the total territory of the United States.

The federal government has long occupied a majority of the property in some states. This includes as much as 84 percent of the land in Nevada, 69 percent in Alaska, 57 percent in Utah, 53 percent in Oregon, and 50 percent in Idaho.<sup>1</sup>

Between 1997 and 2004, the latest years for which reliable information is available, federal land ownership increased from 563.3 million acres to 654.7 million.<sup>2</sup> That is an increase of more than 90 million acres, or a 16 percent increase.

According to the Congressional Research Service (CRS), there are several manners in which the government may take over property. “The physical taking claim asserts that the government has taken property by causing, or authorizing, a physical encroachment upon that property.” CRS notes that “physical takings claims break down into two subcategories, involving (1) permanent physical occupations, and (2) temporary physical invasions.”<sup>3</sup>

### **This Amendment Would Involve Land Owners In Government Decisions About Their Property**

Samuel Adams profoundly questioned, “Now what liberty can there be where property is taken away without consent?”<sup>4</sup>

This amendment ensures both liberty and consent.

It would do so by requiring that the very people affected by the government’s taking of property can voluntarily accept or reject the government land grab.

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<sup>1</sup> Kristina Alexander and Ross W. Gorte. “Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention,” Congressional Research Service, December 3, 2007.

<sup>2</sup> [http://www.gsa.gov/gsa/cm\\_attachments/GSA\\_DOCUMENT/Annual%20Report%20%20FY2004%20Final\\_R2M-n11\\_0Z5RDZ-i34K-pR.pdf](http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf) ; and [http://www.gsa.gov/gsa/cm\\_attachments/GSA\\_DOCUMENT/owned\\_inv\\_97\\_R2M-n11\\_0Z5RDZ-i34K-pR.pdf](http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/owned_inv_97_R2M-n11_0Z5RDZ-i34K-pR.pdf)

<sup>3</sup> Robert Meltz. “The Constitutional Law of Property Rights ‘Takings’: An Introduction,” Congressional Research Service, December 19, 2006.

<sup>4</sup> Samuel Adams. “The Rights of the Colonists,” The Report of the Committee of Correspondence to the Boston Town Meeting, November 20, 1772.

## **This Amendment Would Not Affect Federal Transportation Projects, National Defense, Or Homeland Security**

The amendment would apply to the Department of Interior, Department of Energy and the Forest Service. The National Park Service and the U.S. Fish and Wildlife Service, both of which are part of the Department of Interior, and the U.S. Forest Service, which is part of the U.S. Department of Agriculture, are responsible for 360 million acres, or about 55 percent of all federal lands.<sup>5</sup>

The requirements of the amendment are also exempted in the case of a national emergency, as determined by the President.

Homeland security, national defense, interstate highways, and other national transportation projects, therefore, would not be affected by the enactment of this amendment.

## **Delegating Property Decisions Is Not Unusual**

The power of eminent domain been exercised through both legislation and legislative delegation. It is usually delegated to another governmental body, but the power may be delegated to private corporations, such as public utilities, railroad and bridge companies.

This amendment would delegate the final decision to the land owners who would be affected.

Clearly if politicians, bureaucrats and corporations have a role in deciding what land the government can cease control of, so should the taxpayers who currently own and live on the land that the government seeks to take.

## **The Federal Government Has Expanded Its Justifications for Taking Private Property From American Citizens**

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<sup>5</sup> Kristina Alexander and Ross W. Gorte. "Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention," Congressional Research Service, December 3, 2007.

It was not until 1876 that the existence of eminent domain was recognized by the Supreme Court in *Kohl v. United States*, in which the Court affirmed that the power was as necessary to the existence of the National Government as it was to the existence of any State.

The federal power of eminent domain is, of course, limited by the grants of power in the Constitution, so that property may only be taken for the effectuation of a granted power, but once this is conceded the domain of national powers is so wide-ranging that vast numbers of objects may be affected.

Whenever lands in a State are needed for a public purpose, Congress may authorize that they be taken, either by proceedings in the courts of the State, with its consent, or by proceedings in the courts of the United States, with or without any consent or concurrent act of the State.<sup>6</sup>

While the power of eminent domain has only be exercised through legislation or through legislative delegation, usually to another governmental body, the power may be delegated as well to private corporations, such as public utilities, railroad and bridge companies, when they are promoting a valid public purpose.

In a 1946 case involving federal eminent domain power, the Court stated, "We think that it is the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority."<sup>7</sup>

The power of eminent domain has been exercised for transportation and the supplying of water as well as to establish public parks, to preserve places of historic interest, and to promote "beautification."<sup>8</sup>

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<sup>6</sup> *Chappell v. United States*, [160 U.S. 499, 510](#) (1896). The fact that land included in a federal reservoir project is owned by a state, or that its taking may impair the state's tax revenue, or that the reservoir will obliterate part of the state's boundary and interfere with the state's own project for water development and conservation, constitutes no barrier to the condemnation of the land by the United States. *Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.*, [313 U.S. 508](#) (1941). So too, land held in trust and used by a city for public purposes may be condemned. *United States v. Carmack*, [329 U.S. 230](#) (1946).

<sup>7</sup> *United States ex rel. TVA v. Welch*, [327 U.S. 546, 551-52](#) (1946). Justices Reed and Frankfurter and Chief Justice Stone disagreed with this view. *Id.* at 555, 557 (concurring).

<sup>8</sup> E.g., *Shoemaker v. United States*, [147 U.S. 282](#) (1893) (establishment of public park in District of Columbia); *Rindge Co. v. Los Angeles County*, [262 U.S. 700](#) (1923) (scenic highway); *Brown v. United*

The Supreme Court has approved generally the widespread use of the power of eminent domain by federal and state governments in conjunction with private companies to facilitate urban renewal, destruction of slums, erection of low-cost housing in place of deteriorated housing, and the promotion of aesthetic values as well as economic ones.

In *Berman v. Parker*, a unanimous Court observed: "The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."<sup>9</sup>

This every expanding government power essentially allows Congress and unelected bureaucrats to whim any reason to take private property from citizens with little, if any, recourse.

This amendment provides some check on this expansion of government powers that threaten the rights and property of American citizens.

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States, [263 U.S. 78](#) (1923) (condemnation of property near town flooded by establishment of reservoir in order to locate a new townsite, even though there might be some surplus lots to be sold); *United States v. Gettysburg Electric Ry.*, [160 U.S. 668](#) (1896), and *Roe v. Kansas ex rel. Smith*, [278 U.S. 191](#) (1929) (historic sites). When time is deemed to be of the essence, Congress takes land directly by statute, authorizing procedures by which owners of appropriated land may obtain just compensation. See, e.g., Pub. L. No. 90-545, Sec. 3, 82 Stat. 931 (1968), 16 U.S.C. Sec. 79(c) (taking land for creation of Redwood National Park); Pub. L. No. 93-444, 88 Stat. 1304 (1974) (taking lands for addition to Piscataway Park, Maryland); Pub. L. No. 100-647, Sec. 10002 (1988) (taking lands for addition to Mannassas National Battlefield Park).

<sup>9</sup> [348 U.S. 26, 32](#)-33 (1954) (citations omitted). Rejecting the argument that the project was illegal because it involved the turning over of condemned property to private associations for redevelopment, the Court said: "Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. The public end may be as well or better served through an agency of private enterprise than through a department of government--or so the Congress might conclude." *Id.* at 33-34 (citations omitted).